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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 KEVIN C. TERRIAN, a single man,
9 Plaintiff,

CASE NO. C08-5123BHS

10 v.

ORDER GRANTING
DEFENDANT'S 12(b)(6)
MOTION TO DISMISS

11 PIERCE COUNTY,
12 Defendant.

13 This matter comes before the Court on Defendant's 12(b)(6) Motion to Dismiss
14 (Dkt. 4). The Court has considered the pleadings filed in support of and in opposition to
15 the motions, the exhibits and declaration, and hereby grants Defendant's motion for the
16 reasons stated herein.

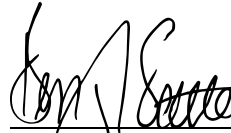
17 Plaintiff asks the Court to consider this motion a motion for summary judgment
18 under Fed. R. Civ. P. 56. Dkt. 2. However, Defendant has only submitted court
19 documents from a criminal proceeding in which Plaintiff pled guilty to obstruction of a
20 law enforcement officer and unlawfully operating a motor vehicle. Dkt. 4-2, Dkt. 4-3.
21 The charges which Plaintiff pled guilty to concern the incident giving rise to the instant
22 claims where Plaintiff attempted to flee from pursuing officers and was eventually
23 apprehended by a K-9 Unit. Dkt. 4-2. As Defendant points out, this Court is able to take
24 judicial notice of these court documents in a Fed. R. Civ. P. 12(b)(6) motion and therefore
25 the Court will continue to view this motion as a motion to dismiss and not as a motion for
26 summary judgement. *See Iacononi v. New Amsterdam Casualty Co.*, 379 F.2d 311, 312
27 (3rd Cir. 1967).
28

1 Plaintiff concedes that his 42 U.S.C. § 1983 and his negligence claims should be
2 dismissed. Dkt. 5 at 1. Plaintiff contests that his claim for damages pursuant to RCW §
3 16.08.040 fails to state a claim upon which relief can be granted. *Id.* at 2. Plaintiff
4 contends that the dog bite giving rise to his damages occurred while “exercising due care
5 for his own safety.” Dkt. 1 at 3. This contention, however, is not consistent with his
6 guilty plea for obstruction related to his fleeing from pursuing officers. Furthermore,
7 because Plaintiff has conceded that he cannot support a claim for a violation of the Fourth
8 Amendment or for negligence, his claim also fails to state an actionable claim under
9 RCW § 16.08.040. *Miller v. Clark County*, 340 F.3d 959, 968 n.14 (9th Cir. 2003).

10 Therefore, it is **ORDERED** that Defendant’s 12(b)(6) Motion to Dismiss (Dkt. 4)
11 is hereby **GRANTED**. Plaintiff’s claims are hereby **DISMISSED with prejudice**.

12 DATED this 9th day of May, 2008.

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BENJAMIN H. SETTLE
United States District Judge